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IN THE HIGH COURT OF JUDICATURE AT BILASPUR [C.G.]

SECOND APPEAL NO. 283 /2006

Single Bench

APPELLANT
PLAINTIFF

:- Banshi Lal S/o Dew Singh Teli, aged 60 years, Occupation-Agriculture, Resident of village Regada, Tahsil and District Raigarh [C.G.].

VERSUS

RESPONDENTS
DEFENDANTS

:- 1] Mohammad S/o Faffur, aged 35 years,

2] Islam S/o Gaffur, aged about 34 years.

3] Shobhnath S/o Gopiram Aghariya, aged about 40 years.

All resident of Regada, Tahsil and District Raigarh [C.G.].

4] State of Chhattisgarh, Through- Collector, Raigarh [C.G.].

SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE

CODE 1908

Valuation Rs. 1000/-

18

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 283 of 2006]

**Appellant/
Plaintiff**

:

Banshi Lal

Vs.

**Respondents/
Defendants**

:

Mohammad and others.

JUDGMENT

POST FOR JUDGMENT ON 15-09-2006

**Sd/-
Dhirendra Mishra
Judge**

(12)

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 283 of 2006

**Appellant/
Plaintiff**

:

Banshi Lal

Vs.

**Respondents/
Defendants**

:

Mohammad and others.

Appellant by Shri S.K. Tiwari, Advocate.

J U D G M E N T
(Delivered on 15/09/2006)

Dhirendra Mishra, J

The appellant/plaintiff has preferred this second appeal under Section 100 of the Code of Civil Procedure against the judgment and decree dated 04th March 2006 passed by the learned Second Additional District Judge, Raigarh in Civil Appeal No. 23-A/05 and by which the civil appeal preferred by the appellant against the judgment dated 27.4.2005 passed in Civil Suit No. 235-A/02 by learned Additional Civil Judge, Class-I, Raigarh, has been dismissed. (Parties hereinafter shall be referred to as per their description before the trial Court).

2. Briefly stated the case of the plaintiff is that the plaintiff filed a civil suit for declaration, possession and damages with the averment that the suit land described in schedule with the plaint was purchased as Aabadi land by father of the plaintiff Dev Singh on 13.4.1956 from ex-proprietor Khaliullah without any consideration forever and Khaliullah has executed a

deed dated 13.4.1956 pertaining to the same in favour of father of the plaintiff and since then the plaintiff and his father were in peaceful possession of the suit land without any interruption for a continuous period of 45 years. The plaintiff has further averred that in the south of the suit land there was land of Narhari whereas in the west Khalilullah's land was situated and they never interfered in his possession. Narhari was cultivating Khasra No. 207/1, area 0.150 hectares. However, defendant No. 3 claimed that he has purchased the suit land bearing Khasra No. 207/1, area 0.37 decimal from Narhari on 25.1.1999. Defendants No. 1 and 2 have taken forceful possession of the land of the plaintiff in his absence on 13th June 2001. In the alternative it has been pleaded that in case the suit land is found to be a part of Khasra No. 207/1, then it has been claimed that the plaintiff has perfected his title by adverse possession due to his long possession over the suit land.

3. Denying the allegations in the plaint defendants No. 1 to 3 in their joint written statement have stated that at the time of road construction number of encroachments were removed and in the process the encroachment of the plaintiff before their land bearing Khasra No. 207/1 was also removed. The plaintiff has never been in possession over the suit land and the same was in possession of Shobhnath. The fact of existence of thrashing field (Kothar) of the plaintiff over the suit land has also been denied and it has been pleaded that from the date of sale defendant No. 3 Shobhnath was in peaceful possession. It has been further submitted that the land was demarcated on 11.6.2001 in the presence of both the parties as per orders passed in the revenue case.

(21)

4. On the basis of pleadings of the respective parties, issues were framed and the trial Court dismissed the suit by recording a finding that the plaintiff has failed to prove that Khaliullah was in possession before 13.4.1956 over Khasra No. 207/1, area 0.150 hectares, he has further failed to prove that father of the plaintiff obtained possession of the suit land from Khaliullah and since then they are in continuous possession of the suit land and thereby have perfected the title due to long possession, that defendants No. 1 and 2 have not taken forceful possession and thereby dispossessed the plaintiff from the suit land and therefore, he is entitled to recover the possession and that defendant No. 3 has also failed to prove that the suit land belonged to Narhari and he has purchased the same legally from him and that it has also not been established that defendant No. 3 Shobhnath is owner of Khasra No. 207, area 0.150 hectares.

5. The appeal preferred by the plaintiff has also been dismissed by the appellate Court by the impugned judgment with identical finding.

6. Learned counsel for the appellant/ plaintiff contended that finding of both the Courts below is based on non-consideration of the pleadings of the respective parties and the same has been recorded considering that the suit land is in fact the land bearing Khasra No. 207, area 0.150 hectares though from bare perusal of the plaint and written statement, it would be evident that the plaintiff was in possession over the plot adjacent to the above land. He has drawn attention of this Court to paragraph - 14 (A) of the plaint and argued that the learned trial Court has wrongly framed

issue Nos. 1 & 2 by which the disputed land has been described as Khasra No. 207/1 and therefore, following substantial questions of law have arisen for adjudication of this appeal:

- (A) "Whether the impugned judgment and decree passed by first appellate Court is bad in law and perverse, hence it is liable to be set-aside?"
- (B) "Whether the wrong appreciation of facts by the learned Courts below can be re-appreciated and examined in second appeal?"

7. I have heard learned counsel for the appellant and perused the material available on record.

8. Learned trial Court has dismissed the suit of the plaintiff with a finding that the plaintiff has not filed any document to demonstrate that the land in question was recorded in the name of Khaliullah who transferred the same to the plaintiff and the plaintiff himself has admitted that the same was Aabadi land which was given to him by Khaliullah and in paragraph - 25 of his cross examination he has admitted that Khasra No. 207/1 is the Bhumiswami land of Shobhnath. Therefore, in the absence of identity of the suit land and in the absence of any evidence of title of the predecessor, it has been held that the plaintiff has failed to prove that the suit land belonged to Khaliullah and accordingly, it has been further held that even if it is assumed that the document of Ex.P/1 is a valid document, it confers no title to the plaintiff in the absence of evidence to the effect that the executant of Ex.P/1 has any right to transfer the land in question.

9. So far as the arguments of learned counsel for the appellant that issue Nos. 1 & 2 have been framed by the Court below without the pleadings of the respective parties is concerned, it cannot be accepted firstly on the ground that the plaintiff participated in the proceedings without raising any objection in this regard either before the trial Court or first appellate Court that the issue has been wrongly framed and the same is beyond the pleadings of the respective parties. Secondly, from perusal of paragraph 20(A) of the plaint wherein it has been pleaded that in case possession of the plaintiff is found over Khasra No. 207/1, in that case the plaintiff has perfected his title by adverse possession as he and his father were in continuous and uninterrupted possession from 1956 till June 2001, it has been denied by the defendants in paragraph – 20(A) of their written statement. Thus, in the light of pleadings in paragraph – 20 of the plaintiff and denial of the pleadings, it cannot be said at this belated stage that issue Nos. 1 & 2 have wrongly been framed by the learned trial Court. Both the Courts below have recorded a concurrent finding of fact that the plaintiff has failed to prove his title over the suit land and has further failed to prove his possession over the suit land and therefore, no substantial question of law as proposed above by the appellant or any other substantial question of law, has arisen for adjudication of this appeal.

10. In the result, the appeal being devoid of substance deserves to be dismissed at the admission stage itself and is accordingly, dismissed.

**Sd/-
Dhirendra Mishra
Judge**